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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,734	03/15/2004	Blake Boyd Bogrett	7359	1836
7590	10/18/2005		EXAMINER	
Robert D. Touslee Johns Manville 10100 West Ute Avenue Littleton, CO 80127			BRUENJES, CHRISTOPHER P	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

15

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/801,734	BOGRETT ET AL.
	Examiner Christopher P. Bruenjes	Art Unit 1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-72 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 March 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20050815</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

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**DETAILED ACTION*****Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-34 of copending Application No.

10/801,733 in view of Elmendorf (USPN 2,332,703).

The claims of '733 teach a fibrous base sheet having a first major surface and a second major surface and a fungi resistant asphalt layer one the first major surface of the fibrous base sheet that is partially absorbed into the fibrous base sheet. The asphalt layer has a fungi growth inhibiting agent therein in amounts that result in the fibrous base sheet

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having more fungi growth resistance than the Kraft paper sheet without the asphalt coating layer (see claim 13). Claims 2-16  
o  
are taught in by claims 14-20, 27-29, and 31-34 of '733 respectively.

The claims of '733 fail to teach that the fibrous base sheet is formed of Kraft paper. However, Elmendorf teaches that it is well known in the art that Kraft paper is used in building construction because it is strong, tough, and flexible (col.1, 1.22-25). One of ordinary skill in the art would have recognized that Kraft paper would be used as the fibrous base sheet depending on the intended end result of the sheet because of Kraft paper's strength, toughness, and flexibility, as taught by Elmendorf.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to select Kraft paper as the fibrous base sheet taught in the claims of '733 in order to provide a fibrous base sheet that has strength, toughness, and flexibility, which are necessary properties in the art of building construction, as taught by Elmendorf.

This is a provisional obviousness-type double patenting rejection.

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*Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 630, 830, and 898. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 126, 136, 226, 236, 326, 336, 426, 436, 536, 634, 636, 684, and 836. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the

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description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

4. The disclosure is objected to because of the following informalities: On page 6, line 15, "Figure 24" should be "Figure 21".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 3-8, 19-24, 39-44, and 57-64 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations "tested in accordance with ASTM Test Designation C1338-00", "D2020-92" or "G21-96" render the claims vague and indefinite because it is not understood if this method of testing is being claimed as being performed on the facing sheet prior to formation of the faced building insulation assembly or if the limitation is merely explaining the method used to arrive at the value or result claimed. Also, the limitations listed above contain standards, which may change with time, and the test method is also not fully defined. The meaning of the phrase is therefore unclear.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-8, 13, 17-24, 29, 35, 37-44, 49, and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Symons (USPN 6,123,795).

Regarding claim 1, Symons anticipates a sheet material comprising Kraft paper sheet material (col.14, l.65) having a first major surface, a second major surface, and a Kraft paper sheet having an impregnating composition (col.3, l.25-26) containing asphalt (col.4, l.18-24) and a fungi growth-inhibiting agent or fungicide in amounts that result in the Kraft paper sheet material being fungi growth resistant (col.10, l.6-12). Regarding claims 2-8, the Kraft paper sheet material exhibits no sporulating growth or non-sporulating growth because the Kraft paper sheet material contains a fungicide to eliminate fungi growth and the impregnating composition is coated on one surface so the second surface is essentially free of asphalt. Regarding claim 13, the sheet material consists essentially of the Kraft paper sheet and the asphalt layer that is substantially coextensive with the second major surface of the Kraft paper sheet because the Kraft paper is only coated with the impregnating composition, which is an asphalt layer, and the coating covers the entire paper layer. Regarding claims 17-24 and 29, the sheet material of Symons having the limitations

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taught above with regard to claims 1-8 and 13 is used as a facing for a faced building insulation assembly (col.14, 1.58-67). The sheet material has a length and width and has a central field portion that overlays and bonds to a major surface of an insulation layer such as foam (col.14, 1.63-67). The central field portion has an outer and inner surface, the inner surface is bonded to the foam insulation layer, and the sheet material is formed from the Kraft paper sheet described above. Regarding claim 35, the Kraft paper sheet material does not have any lateral tabs. Regarding claims 37-44, 49, and 53, Symons anticipates a faced building insulation assembly comprising an insulation layer formed of foam, having a length, a width, a thickness, and first and second major surfaces and a facing comprising a sheet material described above with regards to claims 17-24, 29, and 35 (col.14, 1.58-67).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the

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art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 9-12, 25-28, and 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Symons in view of Inoue (USPN 4,629,645).

Symons teaches all that is claimed in claims 1, 17, and 37 as shown above, but fails to explicitly teach the particular growth-inhibiting agent used or the concentration of that agent in the sheet. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, 1.21-25) added in the range of 0.05% to 10% (col.5, 1.55-57). 0.05% is within the claimed range. Inoue teaches that this agent is used in treating paper sheet material for applying to

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walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, l.27-30). One of ordinary skill in the art would have recognized that Symons and Inoue are analogous insofar as both references are concerned with paper sheet materials used in construction materials for forming walls of a building.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole in a concentration of 0.05% of the sheet material as the fungi growth-inhibiting agent because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by Inoue.

8. Claims 14, 30, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Symons in view of Fischer et al (WO 01/72125 A2). Note US 2003/0100604 A1 has been used as the English equivalent of the PCT publication cited.

Symons teaches all that is claimed in claims 1, 17, and 37, as shown above, but fails to explicitly teach adding an odor-reducing additive to eliminate the odor emitted by the asphalt

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layer. However, Fischer et al teach that asphalt or bitumen used as a binder in a coating composition containing biologically active agents have odor-masking agents added to the asphalt or bitumen in order to mask or eliminate the odor emitted by the asphalt or bitumen. One of ordinary skill in the art would have recognized that in the art of coating compositions comprising biologically active agents and asphalt or bitumen binders, odor-masking additives are added to the asphalt or bitumen in order to eliminate odor that would otherwise be emitted by the asphalt layer, as taught by Fischer et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add an odor-reducing additive in an amount sufficient to substantially eliminate odor that would otherwise be emitted by the asphalt layer to the asphalt layer of Symons, in order to mask or eliminate the odor, as taught by Fischer et al.

9. Claims 15-16, 31-32, and 51-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Symons in view of Inoue and Beilfuss et al (US 2001/0021711 A1).

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Symons teaches all that is claimed in claims 1, 17, and 37 as shown above, but fails to explicitly teach the particular growth-inhibiting agent used. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, l.21-25). Inoue teaches that this agent is used in treating paper sheet material for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, l.27-30). One of ordinary skill in the art would have recognized that Symons and Inoue are analogous insofar as both references are concerned with paper sheet materials used in construction materials for forming walls of a building.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole as the fungi growth-inhibiting agent because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by Inoue.

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Symons and Inoue fail to teach adding zinc pyrithione to the coating or impregnating composition. However, Beilfuss et al teach that when forming a microbiocidal composition, using one or more fungicides, zinc pyrithione is added to the composition in order to stabilize the composition (p.2, paragraph 22). One of ordinary skill in the art would have recognized that zinc pyrithione is added to fungicide containing compositions in order to stabilize the composition, as taught by Beilfuss et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add zinc pyrithione to the coating or impregnating composition of Symons and Inoue in order to stabilize the fungicide composition, as taught by Beilfuss et al.

10. Claims 33-34, 36, and 54-56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Symons in view of Weinstein et al (US 2001/0030018 A1).

Symons teaches all that is claimed in claims 17, 35, 37, and 53, as shown above, and teaches that the Kraft paper sheet is used as a facing on multiple building materials including foamed layers such as foamed insulation. Symons fails to explicitly teach forming the facing sheet having tabs or

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perforation lines or attaching the facing sheet to fibrous insulation batts. However, Weinstein et al teaches that Kraft paper facings coated with bituminous material such as asphalt are also used as facing sheets for glass fiber insulation batts as building insulation. Weinstein et al goes on to teach that is well-known in the art that facing sheets covering glass fiber insulation blankets have one or more perforated lines or overlapping tabs for permitting the facing to be separated at each cut in a pre-cut fibrous insulation blanket to facilitate separating or tearing apart a faced insulation blanket by hand (p.2, paragraph 11). Another embodiment of Weinstein et al includes the insulation layer as laterally compressible because it is a fibrous material. The central field portion of the facing is not bonded to the first major surface of the insulation layer adjacent lateral edge portions of the first major surface of the insulation layer at reference number 37, Figure 12. The limitation "so that lateral compression of the insulation layer causes lateral edge portions of the central field portion of the facing to extend laterally beyond the insulation layer" is a functional limitation in an article claim. Functional language is given little patentable weight as long as the article meets all of the structural limitations. See MPEP 2114. In this case, the assembly of Weinstein et al

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meets the structural limitations and has the ability to perform the functions claimed. One of ordinary skill in the art would have recognized that Kraft paper sheets having asphalt layers are used as facings on glass fiber insulation blankets and that the facings are formed with perforation lines or overlapping tabs to permit the facing to be separated at pre-cut cuts in the insulation blanket or other configurations taught by Weinstein et al, as taught by Weinstein et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to use the Kraft paper sheet of Symons as a facing on an fibrous insulation blanket rather than merely a foam layer and to form the facing with perforation lines or overlapping tabs to permit the facing to be separated at pre-cut cuts in the insulation blanket, as taught by Weinstein et al.

11. Claims 57-64 and 69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moras (USPN 6,279,284) in view of Symons (USPN 6,123,795).

Moras teaches an insulation system for a building wall, floor or ceiling comprising a series of cavities that are each defined in part by spaced apart parallel extending framing members (see abstract and Figure 1). The insulation system

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comprises unfaced fibrous insulation batts contained within each of the series of cavities (reference number 14, Figure 1). The system also comprises a vapor retarder covering (reference number 20, Figure 1) overlying the series of cavities and secured to the framing members defining the cavities (Figure 1). The vapor retarder covering comprises Kraft paper and polyethylene (col.4, 1.50-52).

Moras fails to teach that the vapor retarder covering is fungus growth resistant. However, Symons teaches that Kraft paper is chemically modified in order to provide improved water resistance and mechanical strength for use as a building material (col.1, 1.38-41). Symons teaches that the Kraft paper is chemically modified by coating an impregnation composition on both surfaces of the Kraft paper and allowing the coating to impregnate the paper (col.3, 1.54-59). The impregnating composition includes bitumen, asphalt, coal tar or pitch (col.4, 1.18-22). The impregnating composition further contains a fungicide (col.4, 1.13-15). One of ordinary skill in the art would have recognized that Moras and Symons are analogous insofar as both references are concerned with paper sheet materials used in construction materials for forming walls of a building.

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Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention to coat the impregnating composition of Symons, which is a mineral coating and/or polymeric coating containing fungi growth-inhibiting agent, on both surfaces of the facing of Moras in order to chemically modify the vapor retarder covering of Moras in order to provide the facing with improved water resistance, mechanical strength and fungi growth resistance, as taught by Symons.

12. Claims 65-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moras in view of Symons as applied to claim 57 above, and further in view of Inoue (USPN 4,629,645).

Moras and Symons taken as a whole teach all that is claimed in claim 57 as shown above, but fails to explicitly teach the particular growth-inhibiting agent used or the concentration of that agent in the sheet. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, l.21-25) added in the range of 0.05% to 10% (col.5, l.55-57). 0.05% is within the claimed range. Inoue teaches that this agent is used in treating paper sheet material

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for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, l.27-30). One of ordinary skill in the art would have recognized that Moras, Symons, and Inoue are analogous insofar as both references are concerned with paper sheet materials used in construction materials for forming walls of a building.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole in a concentration of 0.05% of the sheet material as the fungi growth-inhibiting agent in Moras and Symons, because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing the agent when employing them as building materials, as taught by  
Inoue.

13. Claim 70 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moras in view of Symons as applied to claim 57 above, and further in view of Fischer et al (WO 01/72125 A2). Note US 2003/0100604 A1 has been used as the English equivalent of the PCT publication cited.

Moras and Symons taken as a whole teach all that is claimed

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in claim 57 as shown above, but fails to explicitly teach adding an odor-reducing additive to eliminate the odor emitted by the asphalt layer. However, Fischer et al teach that asphalt or bitumen used as a binder in a coating composition containing biologically active agents have odor-masking agents added to the asphalt or bitumen in order to mask or eliminate the odor emitted by the asphalt or bitumen. One of ordinary skill in the art would have recognized that in the art of coating compositions comprising biologically active agents and asphalt or bitumen binders, odor-masking additives are added to the asphalt or bitumen in order to eliminate odor that would otherwise be emitted by the asphalt layer, as taught by Fischer et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add an odor-reducing additive in an amount sufficient to substantially eliminate odor that would otherwise be emitted by the asphalt layer to the asphalt layer of Moras and Symons, in order to mask or eliminate the odor, as taught by Fischer et al.

14. Claims 71-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moras in view of Symons as applied to claim 57

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above, and further in view of Inoue and Beilfuss et al (US 2001/0021711 A1).

Moras and Symons taken as a whole teach all that is claimed in claim 57 as shown above, but fails to explicitly teach the particular growth-inhibiting agent used. However, Inoue teaches that mold inhibitive materials including tough and flexible paper such as Kraft paper used in applying to walls of buildings include mold or fungus inhibitive agents such as 2-(4-Thiazolyl) Benzimidazole (col.5, l.21-25). Inoue teaches that this agent is used in treating paper sheet material for applying to walls of buildings because of its safety durability, heat resistance, and being efficacious against mold (col.5, l.27-30). One of ordinary skill in the art would have recognized that Moras, Symons, and Inoue are analogous insofar as both references are concerned with paper sheet materials used in construction materials for forming walls of a building.

Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use 2-(4-Thiazolyl) Benzimidazole as the fungi growth-inhibiting agent of Moras and Symons, because it is a well known agent for that purpose and it has superior safety durability and heat resistance over other known fungi growth-inhibiting agents, and these properties are necessary considerations when choosing

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the agent when employing them as building materials, as taught by Inoue.

Moras, Symons, and Inoue fail to teach adding zinc pyrithione to the coating or impregnating composition. However, Beilfuss et al teach that when forming a microbiocidal composition, using one or more fungicides, zinc pyrithione is added to the composition in order to stabilize the composition (p.2, paragraph 22). One of ordinary skill in the art would have recognized that zinc pyrithione is added to fungicide containing compositions in order to stabilize the composition, as taught by Beilfuss et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to add zinc pyrithione to the coating or impregnating composition of Moras, Symons, and Inoue in order to stabilize the fungicide composition, as taught by Beilfuss et al.

#### *Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes

Examiner

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CPB  
October 13, 2005

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
 10/14/05